

September 17, 2019

ORIGINAL

Jason M. Gramitt
 Teresa Giusti
 Rhode Island Ethics Commission
 40 Fountain Street
 Providence, RI 02903
Jason.Gramitt@ethics.ri.gov
Teresa.Giusti@ethics.ri.gov

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 RHODE ISLAND
 ETHICS COMMISSION

Re: Response to Complaint No. 2019-11

Dear Mr. Gramitt and Ms. Giusti:

We write as counsel to Governor Gina Raimondo (“**Respondent**”) in response to Complaint No. 2019-11 filed by Brandon S. Bell on July 24, 2019 (the “**Complaint**”) and the “Notice of Determination of Sufficient Allegations of Violation” issued to Respondent on August 21, 2019 (the “**Notice**”). The Commission has already dismissed one charge from the Complaint against the Respondent. According to the Notice, the remaining charge is that Respondent’s “negotiation of a new agreement with International Game Technology PLC (“**IGT**”) to extend its contract with the State of R.I....will benefit her [alleged] business associate, Donald Sweitzer” in violation of Section 36-14-5(d) of the Rhode Island Code of Ethics (the “**Code**”).¹

The Complaint fails for three reasons, each of which is sufficient grounds to dismiss the remaining charge in the Complaint. *First*, despite his title, Mr. Sweitzer is not a “director” or “officer” of the Democratic Governors Association (“**DGA**” or “**Association**”), nor does he play an active or meaningful role in shaping the DGA’s “financial objectives.” It is an established practice at the DGA that the person filling Mr. Sweitzer’s honorary position – including his immediate predecessor – does not fulfill any of the duties that the treasurer of a nonprofit corporation or the treasurer of a state political committee normally undertakes. In fact, neither Mr. Sweitzer nor his predecessor served as the treasurer of any of the political action committees (“**PACs**”) that the DGA registered in jurisdictions across the country. Accordingly, while Governor Raimondo is a “business associate” of the DGA under the precedents of the Rhode Island Ethics Commission (“**Commission**”), she is *not* a “business associate” of Mr. Sweitzer’s. *Second*, there is no evidence in the record that the governmental decision in question will result

¹ Notice of Determination of Sufficient Allegations of Violation at 1 (Aug. 21, 2019). While the Complaint seemed to allege violations based on both the Rhode Island Lottery’s award of the online sports betting contract to IGT earlier this year *and* the negotiation of a new agreement to extend IGT’s current gambling service agreements upon legislative authorization, we interpret the Commission’s Notice to mean only the latter is currently at issue. We have limited our response accordingly.

in “financial gain” for Mr. Sweitzer. *Third*, Section 36-14-5(d) is not intended to restrict Governors from recommending legislative proposals to the legislature for their consideration and subsequently deciding whether to veto or approve such legislation (if the bill passes both houses). By working with legislative leaders and IGT to craft a proposal for legislative consideration, Governor Raimondo acted in the best interests of the state and did what any governor would have done. In fact, as explained in more detail below, Governor Raimondo did precisely what Governor Carcieri did (to great praise) in 2003. Accordingly, the Complaint fails to establish *any* violation of the Code by Governor Raimondo, and certainly falls short of the “knowing and willful” standard required to prove a violation.² The Commission should dismiss the remaining charge against the Respondent and take no further action on the Complaint.

Pursuant to 520 R.I. Admin. Code. R. 00-00-3.10, this constitutes Respondent’s formal response to the Complaint. This response is based on the current record and facts known to Respondent as of the above date. If Respondent learns new information that is relevant to the Complaint, we will submit a supplemental response to the Commission. An addendum is attached which sets forth Respondent’s responses to the factual allegations in the Complaint.³

FACTUAL BACKGROUND

A. The Current Master Agreement Between Rhode Island and IGT

In 2003, the State of Rhode Island entered into a 20-year contract (the “*Master Contract*”) with GTECH Corporation, which subsequently merged with IGT in 2014. But prior to entering into the deal, GTECH Corporation almost left Rhode Island for Massachusetts.⁴

[Rhode Island economic development director Michael McMahon’s] meeting with Donald R. Sweitzer, GTECH’s senior vice president of public affairs, and Marc Crisafulli, the company’s general counsel, quickly became anything but routine.

Halfway through the meeting, Crisafulli and Sweitzer dropped a surprise on McMahon - the company was considering selling its corporate headquarters to its neighbor, Amgen

² R.I. Gen. Laws §§ 36-14-13(a)(8), 36-14-12(c)(1) (“If the commission determines that the verified complaint does not allege facts sufficient to constitute a knowing and willful violation of any of the provisions of this chapter, it shall dismiss the complaint”); *see also* 520 R.I. Admin. Code R. 00-00-3.9; *DiPrete v. Morsilli*, 635 A.2d 1155, 1163 (R.I. 1994) (confirms that the standard for proving a violation of the Code is “knowing and willful”).

³ The Complaint does not include the allegations in numbered paragraphs and adds some facts in the legal analysis section. This makes responding to each factual allegation a challenging exercise. Accordingly, the failure to specifically deny an allegation should not be understood as an admission. If the Commission has questions as to whether Respondent admits or denies an allegation, please contact counsel.

⁴ Andrea Stape, *State’s Quest to Keep GTECH Was a High-Stake Gambit*, Providence Journal (Jun. 29, 2003), <https://www.providencejournal.com/news/20190627/from-archives-states-quest-to-keep-gtech-was-high-stakes-gambit>.

Inc.

Not only that, but GTECH also was thinking about relocating to Massachusetts.

Then-Governor Donald Carcieri played an active role in the subsequent negotiations, “decid[ing] to pay a personal visit” to Mr. Sweitzer and GTECH’s CEO W. Bruce Turner to sell them on staying in Rhode Island and even making plans to go to GTECH’s board of directors meeting in Frankfurt, Germany to sell the company on remaining in Rhode Island.⁵ Governor Carcieri then arranged a Saturday morning negotiating session at the State House with company executives, the Governor, the House Speaker and Senate Majority Leader, Senators Reed and Chafee, and Representatives Kennedy and Langevin.⁶ After negotiations broke down again, Governor Carcieri and then-Providence Mayor David Cicilline “drove back to West Greenwich and worked until 2 a.m. with [GTECH CEO] Turner on a compromise.”⁷ GTECH’s CEO commented that “[i]t was the governor on the speaker phone going through all of the numbers...It was amazing to us that this governor was this hands on.”⁸ According to the *Providence Journal*, it was the Governor’s involvement “[t]hat sealed the deal.”⁹ The agreement still had to be approved by the legislature, Providence City Council, and the Lottery Commission. But without the involvement of the Governor and his administration, “GTECH would have had to move to Massachusetts.”¹⁰

Following the necessary approvals, in May of 2003, the Rhode Island Lottery entered into the current 20-year Master Contract with GTECH Corporation, granting it the right to be the exclusive provider of information technology hardware, software, and related services for all lottery games in Rhode Island.¹¹ In 2014, GTECH Corporation merged with IGT and IGT took over the Master Contract with the State.¹²

B. The Introduction of Legislation to Extend the Master Contract

In January 2019, executives from IGT – a group that did *not* include Mr. Sweitzer, who had retired from the company the previous month – reached out to the Governor’s office to determine whether the rudimentary terms of a contract extension could be negotiated, and then brought to

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Independent Auditor’s Report, Rhode Island Lottery (2014) at 35, <http://www.oag.ri.gov/reports/LotteryRI2014.pdf>.

¹² *Id.* at 36.

the legislature for introduction, hearing, and, ultimately, an up-or-down vote.¹³ Publicly-available news reports confirm that “IGT CEO Marco Sala and a group of company executives met with [Governor] Raimondo in January.”¹⁴ As noted above, Mr. Sweitzer retired from IGT in December of 2018.¹⁵ Though he is currently registered as a lobbyist in Rhode Island for IGT, Mr. Sweitzer was not involved in the negotiations regarding the extension of the Master Contract.¹⁶ Simply put, the Complaint’s claims regarding Mr. Sweitzer’s involvement are wildly overstated.¹⁷

IGT is one of only three companies in the world that performs the services at issue here and it is the only one of those three based in Rhode Island.¹⁸ On June 27, 2019, after months of negotiations, Governor Raimondo, Speaker Mattiello, and Senate President Ruggerio announced that an agreement had been reached on a term sheet for a contract extension with IGT.¹⁹ According to a press release on the legislature’s website, the term sheet included the following provisions to benefit Rhode Island:²⁰

- IGT must pay Rhode Island \$25 million.
- IGT must make \$150 million in capital investments in Rhode Island over the next 25 years.
- IGT provides at least 1,100 permanent jobs in Rhode Island, with an average annual salary of \$100,000.
- Any time IGT plans to create at least 30 U.S.-based jobs or transfer as many employees,

¹³ Press Release, *IGT Announces Retirement of Donald R. Sweitzer, Chairman of IGT Global Solutions Corporation*, PR Newswire (Dec. 5, 2018), <https://www.prnewswire.com/news-releases/igt-announces-retirement-of-donald-r-sweitzer-chairman-of-igt-global-solutions-corporation-300760224.html>; Ted Nesi, *Raimondo: IGT CEO Told Me 1,000 RI Jobs Could Disappear Without New Deal*, WPRI.com (Aug. 5, 2019), <https://www.wpri.com/news/politics/raimondo-igt-ceo-told-me-1000-ri-jobs-could-disappear-without-new-deal/>.

¹⁴ Nesi, *supra* note 13.

¹⁵ Press Release, *supra* note 13.

¹⁶ Katherine Gregg, *Who told Mattiello IGT Wanted a New Deal? Raimondo’s Treasurer at DGA*, Providence Journal (Jul. 9, 2019), <https://www.providencejournal.com/news/20190709/who-told-mattiello-igt-wanted-new-deal-raimondos-treasurer-at-dga>.

¹⁷ Gregg, *supra* note 16 (“Asked if Raimondo ever discussed with Sweitzer the proposed 20-year IGT contract extension...her spokesman Josh Block said: ‘Mr. Sweitzer had no involvement in the negotiation of this agreement.’”).

¹⁸ *Id.* (“IGT is one of only three companies in the world — and the only company in Rhode Island — capable of operating this system...”).

¹⁹ Press Release, *Governor, Speaker, Senate President Announce Agreement for Continued Partnership with IGT*, http://rilegislature.gov/pressrelease/_layouts/mobile/disform.aspx?List=c8baae31%2D3c10%2D431c%2D8dcd%2D9dbbe21ce3e9&View=0a84f57e%2Ddf7c%2D49b2%2Dbd71%2D0c276b4cd05c&ID=370480.

²⁰ *Id.*

where not contractually obligated, to another state, the company agrees to give Rhode Island the right of first offer to make a proposal for IGT to locate those jobs in Rhode Island.

- IGT will maintain its corporate lottery office at 10 Memorial Boulevard in Downtown Providence.
- IGT will install a new, state-of-the-art online lottery solution and will bring its iLottery products to Rhode Island.
- IGT will regularly update its hardware and software to ensure Rhode Island Lottery consistently has state-of-the-art technology. Rhode Island Lottery will also have contractual rights to new technology developed by IGT in the future.
- IGT will replace more than 900 VLTs with brand new machines at Twin River Lincoln (25% of IGT's machines) by the end of 2020 and will be obligated to replace at least the lowest performing 6% of machines at Twin River Lincoln and Twin River Tiverton every year.
- Instant ticket pricing will be locked in at its current rate through the life of the new contract.

Both legislative leaders praised the proposal to keep thousands of good jobs in Rhode Island.²¹ “I am grateful to Governor Raimondo for her work to keep IGT headquartered in Rhode Island,” said Senate President Ruggerio.²² “IGT is a major Rhode Island employer, with about 1,000 jobs averaging \$100,000 in salary presently, and the number of Rhode Island jobs is anticipated to increase under this proposal.”²³ “IGT is one of Rhode Island’s most valued corporate partners, and I want them to continue to call Rhode Island home for decades to come,” said Speaker Mattiello.²⁴

The term sheet, however, has no legal effect whatsoever. On June 27, Senate President Ruggerio introduced Senate Bill 1031 (“**SB-1031**”) and on June 28, House Speaker Mattiello introduced House Bill 6266 (“**HB-6266**”).²⁵ Both bills would “authorize the State Lottery Division of the

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Press Release, Governor, Speaker, Senate President Announce Agreement for Continued Partnership with IGT, http://www.rilegislature.gov/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=370480 (“The General Assembly leaders will be introducing legislation this afternoon (2019-H 6266, 2019-S 1031) to codify this agreement into state law. Hearings on the legislation will be held later this year.”); SB-1031,

Department of Revenue (the ‘Division’) to agree to an extension of the Division’s partnership with IGT Global Solutions Corporation, a Delaware corporation (‘IGT’), including the continuance of a significant presence in the State.”²⁶ Section 2 of each bill authorizes the Lottery Division to negotiate a 20-year agreement that includes ten enumerated provisions – many of which are summarized above – and “[c]ontain[s] such other terms and conditions as the Division and IGT may agree.”²⁷ The current Master Contract is 200 pages.

Speaker Mattiello and Senate President Ruggiero have made clear that amendments to SB-1031 and HB-6266 are likely, if either bill passes at all. In a press release, Speaker Mattiello maintained that “I am committed to a full public vetting of this proposal and the House will hold hearings in the fall,” and Senate President Ruggiero announced that “[s]ince it is close to the end of the regular legislative session, I intend to introduce the legislation today so it is available for public inspection over the next few months, then return for a special session in the fall to thoroughly review and analyze the bill through the committee process before it is considered.”²⁸ Recently, both legislative leaders requested additional documents regarding the proposed partnership.²⁹

Legislative hearings have already been scheduled.³⁰ The Senate Finance Committee will host at least five public hearings to review and vet the proposed extension of the Master Contract.³¹ According to a press release issued earlier this month, the first hearing will “include an overview of state procurement processes and a review of the current lottery system provider contract” with subsequent hearings covering topics like “an analysis of the terms proposed in SB-1031 and alternative proposals; inquiry into the negotiation and development of proposed contract terms; analysis of economic impact studies on the proposal; and, an overview of best practices and the

<http://webserver.rilin.state.ri.us/BillText/BillText19/SenateText19/S1031.pdf>; HB-6266,
<http://webserver.rilin.state.ri.us/BillText/BillText19/HouseText19/H6266.pdf>.

²⁶ SB-1031 at 1; HB-6266 at 1.

²⁷ SB-1031 at 3; HB-6266 at 3.

²⁸ Press Release, *Governor, Speaker, Senate President Announce Agreement for Continued Partnership with IGT*, http://rilegislature.gov/pressrelease/_layouts/mobile/dispform.aspx?List=c8baae31%2D3c10%2D431c%2D8dcd%2D9dbbe21ce3e9&View=0a84f57e%2Ddf7c%2D49b2%2Dbd71%2D0c276b4cd05c&ID=370480.

²⁹ See, e.g., Patrick Anderson, *Mattiello, Ruggiero Seek Answers From Raimondo on IGT Deal*, Providence Journal (Aug. 13, 2019), <https://www.providencejournal.com/news/20190813/mattiello-ruggiero-seek-answers-from-raimondo-on-igt-deal>; GoLocalProv News Team, *NEW: Mattiello, Ruggiero Request Additional IGT Documents from Raimondo*, GoLocalProv.com (Aug. 13, 2019), www.golocalprov.com/business/new-mattiello-ruggiero-request-additional-igt-documents-from-raimondo; Press Release, *Speaker Mattiello, President Ruggiero request IGT documents from Governor*, http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=370555.

³⁰ Press Release, *Senate Finance Committee to Hold Public Hearings on Proposed Lottery Contract Extension*, http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=370566&randId=0.8610206569171716.

³¹ *Id.*

current landscape related to gaming industry technology provider services.”³² In fact, the Senate Finance Committee even created a separate website to keep the public informed and allow the public to provide the committee with input on the hearings and proposed extension.³³ The Senate Finance Committee will revise the proposal based on public comments and input from individual legislators during the public hearings. The amended version of the bill will work its way through the House and Senate, and if it passes both houses of the legislature – which is by no means guaranteed – the bill will be presented to the Governor for her approval or disapproval. Only if those steps are taken will the Lottery Division be authorized to enter into an amended Master Contract with IGT, a negotiating process that is likely to take one year.

C. Structure of the DGA

The DGA is an unincorporated nonprofit association that is organized under Title 29, Chapter 11 of the D.C. Code and comprised of all governors of the states and territories who are members of the Democratic Party.³⁴ The DGA only has offices in Washington, D.C. and currently employs 29 full-time staff.³⁵ Founded in 1983, the DGA is organized to support Democratic governors and candidates across the nation.³⁶

Under D.C. law, an “unincorporated nonprofit association” means “an unincorporated organization, consisting of 2 or more members joined under an agreement that is oral, in a record, or implied from conduct, for one or more common, nonprofit purposes.”³⁷ There are two important distinctions between “unincorporated associations” and “nonprofit corporations” under D.C. law.

First, unincorporated associations do *not* have bylaws. Instead, unincorporated associations are governed by “governing principles.”³⁸ Unlike bylaws – the terms of which are fully reduced to writing – governing principles encompass “the agreements, whether oral, in a record, *or implied from its established practices*, that govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers.”³⁹ For these purposes, “established practices” are “the practices used by an unincorporated nonprofit association without material change during the most recent 5 years of its existence.”⁴⁰ Accordingly, the DGA’s governing principles include its written protocols – which were adopted

³² *Id.*

³³ *Id.*; see also Senatelotterycontracthearings.com.

³⁴ See DGA Document Production at 0001.

³⁵ See Affidavit of Stephen Hill, DGA Chief Operating Officer.

³⁶ About the DGA, <https://democraticgovernors.org/about/>.

³⁷ D.C. Code Ann. § 29-1102(5).

³⁸ *Id.* § 29-1102(2).

³⁹ *Id.* (emphasis added).

⁴⁰ *Id.* § 29-1102(1).

by the DGA on February 21, 2015⁴¹ – and its unwritten “established practices.”

Second, unlike nonprofit corporations, unincorporated nonprofit associations do *not* have “officers.”⁴² Under D.C. law, each nonprofit corporation must have at least two officers, including a “treasurer,” who is legally “responsible for the financial affairs of the corporation.”⁴³ But unincorporated nonprofit associations are not subject to this requirement. Accordingly, the Complaint’s assertion that “Raimondo and Sweitzer are both officers of the DGA” is untrue as a matter of law.⁴⁴ An unincorporated nonprofit association *may, if it so chooses*, appoint a “treasurer” and assign her/him the same duties as the treasurer of a nonprofit corporation; or an unincorporated nonprofit association may appoint a “treasurer” and limit her/him to fundraising activities; or an unincorporated nonprofit association may appoint no “treasurer” at all. And because an unincorporated association’s “governing principles” include its “established practices,” one must look to the organization’s actual practices (in addition to any written documents) to discern the function that each person plays.

The DGA’s “governing principles,” as constituted by its written protocols and established practices, are as follows:

First, the members of DGA are the governors of the states and territories of the United States who are currently affiliated with the Democratic Party.⁴⁵ Among the member governors, the DGA elects a Chair, a Vice Chair, a Finance Chair, and a Chair-elect, all of whom must be governors.⁴⁶

Second, the DGA maintains an Executive Committee, which is comprised of the Chair, Vice Chair, Finance Chair, current Chair-elect, any former Chairs who are currently Members, and any additional members selected by the Chair.⁴⁷ The Executive Committee has the exclusive authority to approve any allocation of DGA funds for political purposes in a particular state in

⁴¹ See DGA Document Production at 0005; *see also* Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁴² The Complaint points to the DGA’s Form 8871 to support its claim that Mr. Sweitzer is an “officer.” Compl. at 1. But that argument is misguided. The Form 8871 is merely a notification to the IRS to claim tax-exempt status. It is not a corporate governance document. On the Form 8871, Mr. Sweitzer is listed as the DGA’s “Treasurer” under Part V, where organizations are instructed to list all “Officers, Directors and Highly Compensated Employees.” According to the Form 8871 instructions, Part V should list “the name, title, and address of all of the organization’s officers, members of the board of directors (that is, governing body, regardless of name), and highly compensated employees.” Instructions for Form 8871, Political Organization Notice of Section 527 Status, <https://www.irs.gov/instructions/i8871#idm140478002840800>. Significantly, however, the instructions do not define “officer” or explain how an association without officers should identify personnel. DGA listed Mr. Sweitzer out of an abundance of caution. But he is *not* an “officer” because the DGA does not have any officers.

⁴³ D.C. Code Ann. § 29-406.40(a).

⁴⁴ Compl. at 1.

⁴⁵ DGA Document Production at 0001.

⁴⁶ *Id.*

⁴⁷ *Id.*

excess of \$100,000.⁴⁸ The Executive Committee's role cannot be understated. It is responsible for determining how the DGA spends a large share of its budget; in 2017-18, for example, the DGA spent 85 percent of its overall budget on political expenditures.⁴⁹ Currently, Governors Raimondo, Whitmer, Murphy, Cooper and Mills serve on the Executive Committee.⁵⁰ DGA's Political Director (see below for more on the DGA's departmental structure) sends allocation requests to the current members of the Executive Committee, and those requests are then discussed and approved or disapproved by Executive Committee members.⁵¹ Because there are only three elections in 2019 — in Kentucky, Louisiana, and Mississippi — the majority of allocation requests received by the Executive Committee this year request spending in those three states.⁵² DGA's Treasurer does not serve on the Executive Committee and, therefore, has no authority to decide how to allocate DGA funds for political expenditures in the states.

Third, the Chair traditionally serves for a single year and exercises broad authority with respect to the DGA's governance. The Chair sets the time and place of, and presides over, all DGA and Executive Committee meetings; appoints additional committees as may be necessary; approves the DGA's annual budget; authorizes any borrowing by the DGA; supervises the Executive Director's control of the assets, business and affairs of the DGA; performs all duties incident to the office of Chair; and performs such other functions as may be authorized by the members.⁵³ The Chair also appoints the Executive Director.⁵⁴ The Chair is a part-time, uncompensated, volunteer position. In December of 2018, Governor Raimondo was elected to serve as Chair and her tenure ends in December of 2019.

Fourth, the Executive Director manages the affairs of the Association. The Executive Director is responsible for management of personnel, finances, and programs and is responsible for staff management, including hiring, training, disciplinary action, and discharge.⁵⁵ The Executive Director has authority to enter into contracts, execute and deliver instruments, or spend funds in the name of, and on behalf of, the DGA (except for the spending power that is reserved to the Executive Committee).⁵⁶ The Executive Director may delegate his spending authority to others.⁵⁷ The Executive Director is a full-time compensated position.⁵⁸ Noam Lee is the current Executive

⁴⁸ *Id.* at 0003.

⁴⁹ Press Release, *DGA Announces Record-Setting \$138 Million Raised to Date In 2017-18 Cycle*, <https://democraticgovernors.org/news/dga-announces-record-setting-138-million-raised-to-date-in-2017-18-cycle/> ("Record low overhead allowed for the DGA to spend 85% solely on political activities.").

⁵⁰ DGA Document Production at 0011.

⁵¹ *Id.* at 0006-0010; Affidavit of Noam Lee, DGA Executive Director.

⁵² DGA Document Production at 0006-0010.

⁵³ *Id.* at 0002.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Affidavit of Noam Lee, DGA Executive Director.

Director.

Fifth, it is an established practice that the DGA is divided into several departments, each of which is responsible for a segment of DGA operations.⁵⁹ The DGA departments include: Research, Executive, Digital, Finance, Operations, Policy, Communications, and Political. The head of each department is responsible for establishing the department's objectives; hiring and managing staff, consultants, and volunteers to achieve these objectives; and reporting to the Executive Director on the department's progress toward these objectives. Each department head is a full-time compensated position, as are all other employees working in the departments.⁶⁰

Sixth, it is an established practice that any DGA expenditure *not* subject to approval by the Executive Committee is approved as follows: all department heads submit invoices to the Operations Director, Donna Tappin, on an ongoing basis. The Operations Director compiles the invoices into a bimonthly report, which is reviewed by the DGA's Chief Operating Officer, and then reviewed and approved by the Executive Director.⁶¹

Seventh, the DGA is a political organization that expends funds to influence elections across the country. It is an established practice of the DGA to form a PAC in any state where it expends funds to influence elections and where applicable state law requires an association like the DGA to form a PAC to do so.⁶² The DGA maintains a PAC in the following states: Arkansas, Hawaii, Indiana, New York, Pennsylvania, Minnesota, Michigan, Illinois, Louisiana, Mississippi, Montana, Nevada, New Mexico and New Hampshire.⁶³ These PACs use the DGA's tax ID number for their bank accounts and, for legal purposes, are part of the DGA. The DGA also has a federal PAC registered with the Federal Election Commission ("FEC"), named Democratic Action, which expends funds for political purposes in several states.⁶⁴

Except for Arkansas and Nevada, the DGA is required to name a treasurer for each PAC. Just like treasurers of Rhode Island political committees, these state PAC treasurers wield vast authority over the DGA's finances. For example, Indiana law requires that "[a]ll money or other property collected or received by a committee...for a political purpose shall be paid over to and made to pass through the hands of the treasurer" and "[s]imilarly, all money or other property must be disbursed by the treasurer."⁶⁵ New Mexico law likewise requires that "all disbursements

⁵⁹ See Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* There are some states and some types of political spending where the formation of a PAC is not legally required.

⁶³ DGA Document Production at 0041-0097.

⁶⁴ *Id.* at 0076-0080.

⁶⁵ Ind. Code Ann. § 3-9-1-20; *see also* 25 Pa. Stat. Ann. § 3242(a) ("All money received and disbursed by a political committee must be done through the treasurer of the committee.").

of money and receipts of contributions [for a committee be] authorized by and through the...treasurer.”⁶⁶ State laws also require the treasurer to file campaign finance reports disclosing all election activity in that particular state, and to maintain all PAC records, including detailed accounts of receipts, transfers, loans, liabilities, contributions and expenditures.⁶⁷ Federal law requires that PACs like Democratic Action must have a treasurer before it can accept contributions or make expenditures and no expenditure shall be made without the treasurer’s authorization.⁶⁸ The treasurer of a federal PAC is responsible for registering the committee, depositing receipts within 10 days, authorizing expenditures, monitoring contribution limits and prohibitions and signing and timely filing all campaign finance reports.⁶⁹

Notably, Mr. Sweitzer does not serve as treasurer of *any* state or federal DGA PAC.⁷⁰ Nor did his predecessor, Peter O’Keefe. Instead, the DGA’s Chief Operating Officer, Stephen Hill, serves as treasurer for Democratic Action and each state PAC except for Montana and New Hampshire, where state law requires that the treasurer be an in-state resident. In Montana, the treasurer is Sean Smith and in New Hampshire, the treasurer is Terie Norelli.⁷¹ In other words, where the law compels the DGA to appoint a treasurer with formal authority over the organization’s financial objectives, the DGA *never* appoints its honorary “treasurer” to the role.

Eighth, the DGA classifies certain *ex officio* members of the Executive Committee “managers” – the Chair, the Vice Chair, and the Finance Chair.⁷² The fourth manager is the Treasurer.⁷³ In December 2018, Mr. Sweitzer was elected to serve as the DGA’s treasurer. The Treasurer is an unpaid, volunteer position.⁷⁴ Mr. Sweitzer has been active in Democratic politics for years and has raised money for the DGA since the 1990s. The Treasurer occupies a unique role at the DGA. Unlike the other managers, the Treasurer is not required to be a governor (the other three are required to be governors); does not have any voting rights within the organization; and does

⁶⁶ N.M. Stat. § 1-19-34(2); N.M. Code R. 1.10.13.10(B)(7).

⁶⁷ E.g., La. Rev. Stat. §§ 18:1491.4(D)(1), 18:1491.5(A); N.Y. Elec. Law § 14-118(1). See Mich. Comp. Laws § 169.222 (“A committee treasurer...[is] responsible for the committee’s record keeping, report preparation, or report filing [and] shall keep detailed accounts, records, bills, and receipts”); Haw. Rev. Stat. § 11-324(d), (f); Miss. Code Ann. §§ 23-15-803(2)(b), 23-15-807(a); *see also* Political Committee and Political Fund Handbook at 4, Minn. Campaign Finance and Pub. Disclosure Board, https://cfb.mn.gov/pdf/publications/handbooks/PCF_handbook.pdf (“The treasurer must receive, keep records on, and report all money coming into and going out of the committee or fund...If the committee or fund enters into transactions that violate state laws or fails to file proper reports on time, it is the treasurer who is responsible to the Board.”).

⁶⁸ 11 C.F.R. § 102.7(a).

⁶⁹ *Id.* §§ 102.1, 102.8, 102.7, 102.9, 104.18, 104.7.

⁷⁰ DGA Document Production at 0041-0097; Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁷¹ DGA Document Production at 0041-0097; N.H. Campaign Finance System Search, <https://cfs.sos.nh.gov/Public/ViewFiledReports#>; Committee Registration View, Democratic Governors Association - Montana, <https://camptrackext.mt.gov/CampaignTracker/dashboard>.

⁷² DGA Document Production at 0001-0002.

⁷³ *Id.* at 0002.

⁷⁴ Affidavit of Noam Lee, DGA Executive Director.

not serve on the Executive Committee.⁷⁵ The written protocols incorporated into the governing principles provide that the Treasurer *or a designee* has custody of and is responsible for all DGA funds and securities; receives and gives receipts for moneys due and payable to the DGA; and deposits funds in banks, trust companies or other depositories.⁷⁶ Notwithstanding that the written agreement leaves open the possibility that the Treasurer will exercise these duties, it is an established practice that a designee (the Chief Operating Officer) carries out *all* of them and is supervised in these duties by the Executive Director, *not* the Treasurer.⁷⁷

This established practice pre-dates both the current Treasurer and the current Chief Operating Officer. The previous DGA treasurer who served from December 2013 through December 2018, Mr. O'Keefe, relinquished all of his duties as treasurer to then DGA Chief Operating Officer, Ben Metcalf.⁷⁸ When Mr. Hill took over as Chief Operating Officer on May 1, 2015, he too assumed all duties assigned to a Treasurer or a designee in the written agreement.⁷⁹ As the Treasurer's designee, Mr. Hill managed all day-to-day administrative, financial and operational aspects of the DGA and its affiliated entities.⁸⁰ In this capacity, Mr. Hill was an authorized signatory on all DGA bank accounts⁸¹ and helped facilitate a bank loan for the DGA.⁸² And perhaps, most significantly, as set forth above, Mr. Hill was listed as "Treasurer" on countless statements and reports filed with the Federal Election Commission and state campaign finance regulators across the country.⁸³ In contrast, Mr. O'Keefe was not listed on any bank documents or campaign finance filings; did not serve as "Treasurer" for any DGA PACs; did not have custody or responsibility for DGA funds or securities; and had no authority or involvement in maintaining or accounting for the expenditure of DGA funds.⁸⁴

When Mr. Sweitzer became treasurer in December of 2018, Mr. Hill maintained his role as the treasurer designee and continued managing the DGA's day-to-day financial operations.⁸⁵ For example, Mr. Hill is the treasurer on DGA's federal and state PAC filings (except for Montana and New Hampshire, as described above).⁸⁶ Moreover, Mr. Hill is an authorized signatory on all

⁷⁵ DGA Document Production at 0001-0005.

⁷⁶ *Id.* at 0002.

⁷⁷ See Affidavit of Stephen Hill, DGA Chief Operating Officer; Affidavit of Noam Lee, DGA Executive Director.

⁷⁸ Affidavit of Peter O'Keefe, Former DGA Treasurer. Mr. Metcalf served as COO of the DGA between March 2007 and April 2015. See Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁷⁹ Affidavit of Stephen Hill, DGA Chief Operating Officer; *see also* Affidavit of Peter O'Keefe, Former DGA Treasurer.

⁸⁰ Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁸¹ DGA Document Production at 0019-0040.

⁸² *Id.* at 0098-0307; Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁸³ DGA Document Production at 0041-0097.

⁸⁴ Affidavit of Peter O'Keefe, Former DGA Treasurer; DGA Document Production at 0041-0097.

⁸⁵ Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁸⁶ DGA Document Production at 0041-0097.

DGA bank accounts.⁸⁷ Like his predecessor, Mr. Sweitzer is not named on any bank documents or campaign finance filings; does not serve as treasurer for any DGA PACs; does not have custody or responsibility for DGA funds or securities; and has no authority or involvement in maintaining or accounting for the expenditure of DGA funds.⁸⁸

Ninth, the director of DGA's finance department, Meghan Meehan-Draper, is responsible for establishing the department's objectives; hiring and managing staff, consultants, and volunteers to achieve these objectives; and reporting to the Executive Director on the department's progress toward these objectives. Specifically, the Finance Director is responsible for setting the DGA's fundraising goals and developing a fundraising plan to achieve those goals; scheduling and planning DGA fundraising events and conferences; liaising with governors and their staffs on participation in DGA events and other meetings; setting the levels at which donors must give in order to receive certain titles and benefits (e.g., access to DGA events and tickets to those events); and, in conjunction with the Executive Director, Chief Operating Officer, and the DGA's legal counsel, identifying the donors from which contributions will *not* be accepted.⁸⁹

As part of the DGA's fundraising strategy for 2019, the Finance Director and Executive Director decided to create a volunteer DGA Finance Council for individual volunteers who commit to fundraise above a certain threshold for the DGA.⁹⁰ The Executive Director and Finance Director selected Mr. Sweitzer to serve as Chairman of the volunteer Finance Council, but the final list of volunteers has not been finalized and the volunteer Finance Council has not been publicly announced.⁹¹

In summary, the DGA's Treasurer:

- Is not a governor and is not a member of the DGA.
- Does not serve on the Executive Committee and, therefore, plays no role in deciding how to allocate DGA funds for political expenditures in the states. As the documents show, Mr. Sweitzer is not copied on these allocation requests,⁹² nor does he play any role in the request or approval of using DGA funds.⁹³
- Does not schedule, manage or preside over any DGA meetings or meetings of the Executive Committee and does not approve the DGA's annual budget, authorize any

⁸⁷ *Id.*

⁸⁸ *Id.* at 0019-0097.

⁸⁹ Affidavit of Megan Meehan-Draper, DGA Finance Director.

⁹⁰ DGA Document Production at 0389-0391; Affidavit of Stephen Hill, DGA Chief Operating Officer.

⁹¹ Affidavit of Noam Lee, DGA Executive Director; Affidavit of Megan Meehan-Draper, DGA Finance Director.

⁹² DGA Document Production at 0006-0010; Affidavit of Noam Lee, DGA Executive Director.

⁹³ Affidavit of Noam Lee, DGA Executive Director.

borrowing by the DGA, or supervise the Executive Director.

- Does not manage the affairs of the Association and is not responsible for the management of DGA personnel, finances or programs or for staff management, hiring, training, disciplinary action, or discharge.⁹⁴
- Does not direct the DGA's Finance Department or any other DGA department and does not hire or manage staff, consultants or volunteers.
- Does not have any authority to approve DGA expenditures or the borrowing of funds and plays no role in either process.⁹⁵
- Does not serve as treasurer of any DGA PAC at the state or federal level.
- Does not, in fact, have custody of or responsibility for any DGA funds and securities; receive or give receipts for moneys due and payable to the DGA; or deposit funds in banks, trust companies or other depositories for the DGA.
- Does not set the DGA's fundraising goals or develop fundraising plans to achieve those goals. The Treasurer does not schedule or plan DGA fundraising events or set the levels at which donors must give to receive certain titles and benefits in connection with those events and plays no role in determining which contributions will be rejected by the DGA.

The Treasurer, in fact, exercises no formal authority at all.⁹⁶ Mr. Sweitzer's title is honorary in nature and allows him to help fundraise more effectively for the DGA.⁹⁷ Mr. Sweitzer's role is principally limited to three areas. *First*, Mr. Sweitzer raises funds for the DGA and attends (and occasionally gives brief remarks at) DGA events.⁹⁸ *Second*, Mr. Sweitzer advises the DGA's Finance Director based on his long-time experience raising funds.⁹⁹ *Third*, Mr. Sweitzer consults with the Chair, Finance Director and Executive Director on weekly telephone conferences, where he imparts political advice based on decades in Democratic politics.¹⁰⁰

LEGAL ANALYSIS

Section 36-14-5(d) prohibits a covered official from "us[ing] in any way his or her public office

⁹⁴ DGA Document Production at 0002.

⁹⁵ Affidavit of Noam Lee, DGA Executive Director.

⁹⁶ The DGA's practices regarding the Treasurer's duties and activities have not materially changed in over five years. Thus, they are "established practices" of the DGA under governing D.C. law.

⁹⁷ Affidavit of Noam Lee, DGA Executive Director.

⁹⁸ *Id.*; DGA Document Production at 0503-0509.

⁹⁹ Affidavit of Noam Lee, DGA Executive Director; Affidavit of Meghan Meehan-Draper, DGA Finance Director.

¹⁰⁰ DGA Document Production, 0550-0555.

or confidential information received through his or her holding any public office to obtain financial gain...for him or herself or any person within his or her family, any business associate, or any business by which the person is employed or which the person represents.”¹⁰¹ To find a violation of Section 36-14-5(d), therefore, three things must be established:

- That the public official used her office or confidential information;
- That the use of the public office or divulging of confidential information resulted in a “financial gain” for someone; and
- That the “someone” is the public official, the public official’s family member, the public official’s “business associate,” or a business by which the public official is employed or the public official represents.

Finally, to find a violation of the Code, the Commission must find that the violation is “knowing and willful.”¹⁰²

The facts simply do not establish a violation of Section 36-14-5(d), let alone a “knowing and willful” violation.

(A) No “business associate” relationship between Governor Raimondo and Mr. Sweitzer

The Complaint does not allege that Governor Raimondo or her immediate family would earn a pecuniary benefit if the legislature enacts legislation authorizing the Lottery Division to enter into an amended Master Contract with IGT or if such an amended Master Contract eventually goes into effect. Nor could the Complaint make such an allegation. Neither Governor Raimondo nor her spouse work for, represent, or own any stock in IGT. Nor does Governor Raimondo or her spouse work for a firm (such as a law firm or lobbying firm) that provides services to IGT. Nor, significantly, does Governor Raimondo or her spouse have any financial relationship with Mr. Sweitzer, through a commonly-owned business or any other for-profit entity.

Instead, the Complaint claims that Governor Raimondo’s relationship with Mr. Sweitzer through their mutual affiliation with the DGA – a voluntary nonprofit political association – makes Mr. Sweitzer a “business associate” of Governor Raimondo’s. A “business associate” is defined as “a person joined together with another person to achieve a common financial objective.”¹⁰³ Nothing in the plain text of the statute suggests that the Code treats *political* associations like *business* associations. Nor does the Code’s stated purpose – to “avoid the appearance of impropriety, and

¹⁰¹ R.I. Gen. Laws § 36-14-5(d).

¹⁰² *Id.* §§ 36-14-13(a)(8), 36-14-12(c)(1); 520 R.I. Admin. Code R. 00-00-3.9.

¹⁰³ R.I. Gen. Laws § 36-14-2(3).

not use [official] position for private gain or advantage”¹⁰⁴ – evince any concern about political associations. In distinguishing political associations from business ones, the Federal Election Commission has observed that “[u]nlike commercial agents, political volunteers have an affirmative interest in promoting and working toward the campaign’s goals based on personal and ideological, rather than economic, incentives.”¹⁰⁵ The Ethics Commission, too, has been clear that “[i]n and of themselves, shared political affiliations and objectives are not relevant for purposes of the Code of Ethics” and has opined that elected officials “are joined together with those from whom they received an endorsement for a shared political objective, not a common financial objective.”¹⁰⁶

The aversion to regulating political affiliations is not merely a legislative choice or a question of enforcement priorities. It is a constitutional requirement. “It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.”¹⁰⁷ The U.S. Supreme Court has pronounced that “[r]epresentative democracy in any populous unit of governance is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views.”¹⁰⁸ And the U.S. Supreme Court has struck down state laws that burden volunteer activity for political organizations and political parties, noting that “restrictions...on the ability of political parties to help their candidates get elected, and on the ability of individual citizens to volunteer their time to campaigns show that the Act is not closely drawn to meet its objectives.”¹⁰⁹

To avoid burdening core First Amendment rights, the Commission has found that two persons involved in a nonprofit organization are “business associates” only where they are “fellow officers,” “members of the Board of Directors,” or have “leadership positions which permit them to affect the financial objectives” of an organization.¹¹⁰ The “determination [regarding business associate status] has been based on the presumed ability of such persons to, in some manner, influence the entity’s financial objectives.”¹¹¹ But having *some* ability to affect the organization’s financial objectives is insufficient. To qualify as a “business associate, the individual must be

¹⁰⁴ R.I. Const. art. III, § 7.

¹⁰⁵ *Explanation and Justification for the Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures*, 71 Fed. Reg. 4975, 4980 (Jan. 31, 2006).

¹⁰⁶ R.I. Ethics Comm’n Adv. Op. 2001-72.

¹⁰⁷ *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958).

¹⁰⁸ *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000).

¹⁰⁹ *Randall v. Sorrell*, 548 U.S. 230, 253 (2006).

¹¹⁰ R.I. Ethics Comm’n Adv. Ops. 2002-6, 2007-45.

¹¹¹ R.I. Ethics Comm’n Adv. Op. 2008-53 (concluding that owning stock in publicly-traded company is insufficient to qualify as a “business associate” of the company).

able to “play an *active or meaningful* role in the shaping of [the entity’s] financial objectives.”¹¹²

Given this heightened standard, the Commission has recognized that common membership in an organization does not create a “business associate” relationship under the Code.¹¹³ Likewise, serving as an unpaid volunteer for an organization does not, on its own, create a business associate relationship,¹¹⁴ nor does holding a “ceremonial position” that has “no voting rights” regarding the organization’s “financial objectives.”¹¹⁵ And finally, “[t]he Ethics Commission has consistently held that a social relationship or personal acquaintance between parties does not, in and of itself, create an inherent conflict of interest within the meaning of the Code of Ethics.”¹¹⁶

Significantly for purposes of this matter, the Commission has held that fundraising for a nonprofit organization – even when it comes with a title – is insufficient to establish a “business associate” relationship. In Advisory Opinion 98-63, the Commission confirmed that the “honorary chair” of a nonprofit fundraising event was not a “business associate” of the organization’s directors because “taking action to assist the organization’s fundraising efforts standing alone does not make the Petitioner a business associate of the organization and/or its principals.”¹¹⁷ Likewise, in Advisory Opinion 99-114, the Commission held that an elected official did not have a “business associate” relationship with a person who “hosted a party for the

¹¹² *Id.* (emphasis added).

¹¹³ See, e.g., R.I. Ethics Comm’n Adv. Ops. 2001-72, 2002-35. The Complaint cites to Advisory Opinions 99-33 and 98-42 for the proposition that membership in the same political organization is sufficient to find a “business associate” relationship. See Compl. at 4, n. 37. But to the extent the Commission did adopt that position in these two opinions, it has abandoned it in subsequent opinions. See, e.g., RI Ethics Comm’n Adv. Op. 98-72 (concluding that members of a church that were not on the church’s finance committee were not business associates because they “do not direct the operations of the church or have a direct financial interest in its operations.”); R.I. Ethics Comm’n Adv. Op. 98-63 (concluding that the “honorary chair” of a nonprofit fundraising event was not a “business associate” of the organization’s directors). Moreover, the description of the facts in Opinions 99-33 and 98-42 do not make clear whether the parties in question held director or officer positions, or whether they were mere rank-and-file members. Regardless, the weight of Commission precedent is clear that common membership in a political organization is insufficient to find a “business associate” relationship.

¹¹⁴ See, e.g., R.I. Ethics Comm’n Adv. Op. 2002-4 (concluding that an unpaid volunteer at a library is not a business associate of the library and need not recuse herself from the Town’s Budget Board consideration of matters that financially impact the library); R.I. Ethics Comm’n Adv. Op. 2013-18 (concluding that a public official’s ongoing provision of services as a paid contractor does constitute a “business associate” relationship with Butler hospital, but his position as a volunteer and individual member would not, on its own, trigger business associate status).

¹¹⁵ R.I. Ethics Comm’n Adv. Op. 2013-18; see also R.I. Ethics Comm’n Adv. Op. 95-59 (concluding a public official is not a business associate of an organization “unless the official’s association with the organization allows him or her to affect the financial objectives of the organization, through formal voting rights or other means”); R.I. Ethics Comm’n Adv. Op. 2014-29 (finding a volunteer, non-voting member of a land trust is not a business associate of the trust).

¹¹⁶ R.I. Ethics Comm’n Adv. Op. 2019-9.

¹¹⁷ R.I. Ethics Comm’n Adv. Op. 98-63 (concluding that a public official may issue a letter encouraging participating in a fundraising event sponsored by a nonprofit organization of which the official is an honorary chairman).

purpose of raising campaign funds” for the official when he was a candidate.¹¹⁸ The Commission’s policy to exclude unpaid volunteer fundraisers from the scope of the “business associate” rule is prudent. The Federal Election Commission has observed that “[t]he number of individuals involved in fundraising for a campaign can reach hundreds and, in the case of presidential campaigns and national party committees, potentially thousands of individuals, most of whom are volunteers.”¹¹⁹ The Ethics Commission has also found that no “business associate” relationship exists between elected officials and their campaign contributors.¹²⁰ That opinion is consistent with Advisory Opinion 2007-45 which concludes that a “member [of an organization] who provides generalized support...by way of attending meetings and functions” and “making modest financial contributions” does not have the ability to affect the financial objectives of the organization.¹²¹

In contrast, the Commission *has* recognized a business associate relationship between the person who maintains custody over an organization’s funds and other organizational principals. In the political realm, for example, the Commission has held that a Rhode Island candidate has a “business associate” relationship with her campaign’s treasurer. Under Rhode Island law, however, a treasurer has vast statutory authority over the campaign’s receipts and disbursements. Rhode Island law specifies that “[n]o contribution shall be made or received, and no expenditures shall be directly made or incurred...except through [t]he duly appointed campaign treasurer or deputy campaign treasurer”¹²² The treasurer of a political committee must file campaign finance reports with the Board of Elections disclosing in-state activity and must also preserve and maintain all campaign records.¹²³ In Complaint No. 2013-3, the Commission found a “business associate” relationship between the campaign treasurer and candidate, based on the treasurer’s “duties ... consist[ing] primarily of filing the necessary forms with the Board of Elections and managing and paying campaign expenses during elections.”¹²⁴ Notably, in finding a “business associate” relationship, the Commission noted that the treasurer did *not* engage in fundraising for the campaign.¹²⁵

On the other hand, Mr. Sweitzer has no ability to affect – let alone *actively* or *meaningfully* affect – the DGA’s financial objectives. Nor did his predecessor, Mr. O’Keefe. Mr. Sweitzer’s role at

¹¹⁸ R.I. Ethics Comm’n Adv. Op. 99-114. Likewise, no “business associate” relationship existed between elected officials and persons who distributed campaign literature for the officials when they were seeking office. R.I. Ethics Comm’n Adv. Ops. 99-90, 99-96.

¹¹⁹ *Explanation and Justification for the Definitions of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures*, 71 Fed. Reg. 4975, 4977 (Jan. 31, 2006).

¹²⁰ R.I. Ethics Comm’n Adv. Op. 2019-9.

¹²¹ R.I. Ethics Comm’n Adv. Op. 2007-45.

¹²² R.I. Gen. Laws § 17-25-10(a)(3).

¹²³ Campaign Finance Manual at 14, R.I. Board of Elections, http://www.elections.ri.gov/publications/Campaign_Finance/2019_Campaign_Finance_Manual.pdf.

¹²⁴ *In re: Kimberly Gaffet* Compl. No. 2013-3, Informal Resolution and Settlement at 1.

¹²⁵ *Id.*

the DGA is limited to fundraising, attendance at events, and political advice – precisely the roles that the Commission has found do *not* trigger a business associate relationship. Unlike Mr. Hill (the DGA’s Chief Operating Officer and treasurer of the DGA’s PACs) or treasurers of Rhode Island political committees, Mr. Sweitzer (like his predecessor) has no authority to sign checks, deposit or expend funds, approve disbursements, or file financial reports. Like his predecessor, Mr. Sweitzer does not serve on the Executive Committee or play any role in its deliberations. Like his predecessor, Mr. Sweitzer has no budgetary authority. Like his predecessor, Mr. Sweitzer does not manage a department or have any formal role in hiring, firing, or disciplining personnel. And even though he is a trusted adviser to the Finance Director and the Chair, Mr. Sweitzer (like his predecessor) does not set the DGA’s fundraising goals or develop fundraising plans to achieve those goals; does not schedule or plan DGA fundraising events; does not set the levels at which donors must give to receive certain titles and benefits in connection with those events; and plays no role in determining which contributions will be rejected by the DGA.

In summary, because Mr. Sweitzer does not have an active or meaningful role in affecting the DGA’s financial objectives, he is not a “business associate” of Governor Raimondo’s. Finding otherwise would represent a sharp departure from well-established Commission precedents.

(B) No evidence of “financial gain” for Mr. Sweitzer

To find a violation of Section 36-15-5(d), the Commission requires “some evidence indicating a reasonable foreseeability of financial impact” as a result of a public official’s decision or action.¹²⁶ Neither the Complaint nor any other publicly available facts establish that the introduction of legislation regarding a possible extension of the Master Contract – or the extension of the Mater Contract itself – would result in a “financial gain” for Mr. Sweitzer.

First, the Complaint argues that Mr. Sweitzer’s ownership of stock in IGT, a publicly traded company, means that the Master Contract would result in “financial gain” for Mr. Sweitzer. But the Commission has rejected the view that stock ownership in a publicly traded company is sufficient to trigger application of the Code. “While it may be a fair presumption that most, if not all, shareholders of a privately held business are capable of influencing the business’s financial objectives, this presumption would not accurately describe the relationship between a large, publicly traded corporation and its average shareholders.”¹²⁷ The test, instead, is whether “the market value of the...stock is likely to be impacted by the [governmental] decision.”¹²⁸

In applying the test, the Commission has adopted a totality-of-the-circumstances analysis, with the most important factor being “the predictable change in market value of the financial interest

¹²⁶ See, e.g., R.I. Ethics Comm’n Adv. Ops. 2015-11, 2002-28, 2000-65.

¹²⁷ See R.I. Ethics Comm’n Adv. Op. 2008-53.

¹²⁸ *Id.*

given the governmental decision to be made.”¹²⁹ Here, the predictable change in market value based on the potential extension of the Master Contract is negligible. IGT is an enormous, multi-national corporation that operates in “approximately 100 countries, with offices in more than 300 locations throughout North America, South America, Europe, Asia, Africa, and Australia.”¹³⁰ Since the proposal was announced, IGT’s stock price went from \$12.30 on June 25, 2019 to \$14.13 on August 2, then dipped to a low of \$11.37 on August 15, and has since rebounded to \$13.81.¹³¹ Neither IGT’s 2019 first nor second quarterly earnings statements make any mention of the proposal to extend the Master Contract with Rhode Island.¹³² Nor does IGT appear to have issued any press release after the Governor and legislative leaders announced the proposal, even though it issued releases about dealings with other states.¹³³ The evidence, therefore, suggests that the predictable change in market value of IGT stock based on the potential extension of the Master Contract is negligible.

Second, the Complaint alleges that Section 36-14-5(d) precludes Governor Raimondo from taking any action on matters involving IGT because of Mr. Sweitzer’s *representation* of IGT as a lobbyist. But the plain language of Section 36-14-5(d) forecloses such a conclusion. Section 36-14-5(d) bars an official from using her office to achieve a financial gain for a business that *the official* “represents”; it does not purport to prohibit an official from using her office to affect a business that her *business associate* “represents.” Moreover, the Commission has recognized that governmental decisions that may affect a company’s bottom line do *not* generally result in a “financial gain” for employees or contractors that are paid a flat fee or salary by that company.¹³⁴ And Rhode Island law effectively guarantees that Mr. Sweitzer cannot achieve a “financial gain” based on whether his lobbying efforts succeed or fail. Rhode Island law prohibits “contingency fee lobbying,” making it illegal for any person to “pay or accept compensation for lobbying which is based in whole or in part on the degree to which such lobbying is or was successful in influencing any government action.”¹³⁵ The Complaint does not allege that Mr. Sweitzer failed to

¹²⁹ *Id.*

¹³⁰ Locations, IGT, <https://www.igt.com/explore-igt/careers/locations>.

¹³¹ International Game Technology PLC IGT, NYSE, <https://www.nyse.com/quote/XNYS:IGT/QUOTE>.

¹³² International Game Technology PLC Reports First Quarter 2019 Results, <https://igt.gcs-web.com/node/20636/pdf>; International Game Technology PLC Reports Second Quarter 2019 Results, <https://igt.gcs-web.com/node/20891/pdf>.

¹³³ See, e.g., Press Release, *IGT Signs Three-Year Contract Extension with Minnesota State Lottery*, <https://igt.gcs-web.com/news-releases/news-release-details/igt-signs-three-year-contract-extension-minnesota-state-lottery>; Press Release, *IGT Signs Four-Year Contract Extension with the Colorado Lottery to Provide New Lottery Software and Equipment*, <https://igt.gcs-web.com/news-releases/news-release-details/igt-signs-four-year-contract-extension-colorado-lottery-provide>; Press Release, *IGT Signs Three-Year Contract Extension to Provide its INTELLIGEN™ System to the Kansas Lottery*, <https://igt.gcs-web.com/news-releases/news-release-details/igt-signs-three-year-contract-extension-provide-its-intelligentm>.

¹³⁴ R.I. Ethics Comm’n Adv. Ops. 2001-15, 2002-32.

¹³⁵ R.I. Gen. Laws § 421-139.1-8.

comply with this law.

(C) No misuse of public office

Finally, as the Rhode Island Supreme Court has explained, there “must be specific articulable facts indicating that [an official] has actually misused his or her public office or has divulged confidential information garnered through his or her official position for a transgression of § 36-14-5(d) to occur.”¹³⁶ Put another way, there must be a showing that the official used her office for the purpose of achieving a financial gain for the restricted person in question. No such showing has been made.

First, no official governmental act has been taken to date. The Governor asked that certain legislation – authorizing the Lottery Division to enter into a contract extension with IGT – be introduced in the legislature. The Governor had no formal power to compel the Senate President or the House Speaker to agree to her request. Under Rhode Island’s Constitution, “[t]he legislative power … shall be vested in two houses, the one to be called the senate, the other the house of representatives; and both together the general assembly.”¹³⁷ The Governor has no authority to introduce legislation herself, other than the state budget that she presents to the legislature annually.¹³⁸ Notwithstanding the Governor’s lack of formal authority, the Senate President and House Speaker both agreed to introduce legislation, SB-1031 and HB-6266, for consideration by the legislature.¹³⁹ There is no guarantee that either SB-1031 or HB-6266 will pass or, if they do, that they will resemble the current version of the bill. According to the legislature’s website, 6267 bills or resolutions have been introduced in calendar year 2019 and 445 have been transmitted to the Governor for consideration, a “success” rate of 7 percent.¹⁴⁰ To paraphrase Schoolhouse Rock, a bill is *not* a law.

Second, the State Constitution requires that the Governor have *some* involvement in the legislative approval process. If both houses of the legislature pass a bill, it will go to the Governor for her signature or veto.¹⁴¹ The Governor may not recuse herself from her constitutional duty to consider legislation when it is presented to her, nor may she delegate that authority to anyone else. This is distinguishable from a matter within the exclusive jurisdiction of the executive branch that is delegable to another executive branch official, such as a contract

¹³⁶ *Town of Lincoln v. Lincoln Lodge No. 22*, 660 A.2d 710, 717–18 (R.I. 1995).

¹³⁷ R.I. Const. art. VI, § 2.

¹³⁸ R.I. Const. art. IX, § 15.

¹³⁹ Press Release, *Governor, Speaker, Senate President Announce Agreement for Continued Partnership with IGT*, http://www.rilegislature.gov/pressrelease/_layouts/RIL_PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=370480 (“The General Assembly leaders will be introducing legislation this afternoon (2019-H 6266, 2019-S 1031) to codify this agreement into state law. Hearings on the legislation will be held later this year.”).

¹⁴⁰ Legislative Status Report, R.I. General Assembly, <http://status.rilin.state.ri.us/>.

¹⁴¹ R.I. Const. art. IX, § 14.

award or the selection of a law firm to represent the state.¹⁴² In those matters, the Governor may refrain from participating in the process altogether. Here, she may not. The Ethics Commission cannot sanction a Governor for exercising non-delegable authority.

Third, the fact that Governor Raimondo is working to extend a contract that her predecessor initially negotiated demonstrates that her actions are not *intended* to achieve a financial gain for any one person. This is not a narrow executive order or contract award; it is a matter of general applicability that affects more than one thousand jobs and hundreds of millions of dollars in economic activity. To suggest that the Governor of the State may not be involved in such a decision because an incidental benefit may accrue to a political ally reads Section 36-14-5 entirely too broadly.

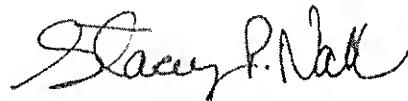
CONCLUSION

The Code makes clear that “[i]f the [C]ommission determines that the verified complaint does not allege facts sufficient to constitute a *knowing and willful* violation of [the Code], it shall dismiss the complaint.”¹⁴³ To find a “knowing and willful” violation, the Commission must find that the Governor’s actions were “not only unreasonable but also deliberate.”¹⁴⁴ Such “deliberate action is characterized by knowledge that ‘the conduct was prohibited by [the] statute’ or by ‘reckless disregard for the question of whether the conduct was prohibited by [the] statute.’”¹⁴⁵ Given the precedents clearly establishing that fundraising activity does not establish a “business associate” relationship, no reasonable person could be expected to have knowledge that the conduct was prohibited by the statute. The record does not establish a violation of Section 36-14-5(d), let alone a knowing and willful violation. The Governor has complied with both the letter and the spirit of the law. The Commission should dismiss the Complaint and take no further action on this matter.

Sincerely,



Jonathan S. Berkon
Counsel to Governor Raimondo



Stacey P. Nakasian
Counsel to Governor Raimondo

¹⁴² Compare *DiPrete*, 635 A.2d 1155 (R.I. 1994) (reviewing Ethics Commission matter involving a Governor’s recommendation of a law firm and selection of an architectural firm).

¹⁴³ R.I. Gen. Laws § 36-14-12(c)(1) (emphasis added); *Licht v. R.I. Ethics Comm’n*, No. Civ.A. 97-3013 (R.I. Super. Mar. 9, 1998) (“The standard for proving a violation of the code of ethics is ‘knowing and willful.’”).

¹⁴⁴ *Larisa, Jr. v Rhode Island Ethics Comm’n*, No. PC20116938, at *9 (R.I. Super. Sep. 3, 2014).

¹⁴⁵ *Id.* (quoting *Carmody*, 509 A.2d at 460).

Rhode Island Ethics Commission
Complaint No. 2019-11
September 17, 2019

Addendum to Response to Complaint No. 2019-11

On behalf of Governor Gina Raimondo (“*Respondent*”), we the above-signed counsel submit this as an Addendum to her formal response (“*Response*”) to Complaint No. 2019-11 (the “*Complaint*”):

1. Donald Sweitzer has been involved in promoting a new long-term agreement between the State of Rhode Island and International Game Technology PLC (“*IGT*”).

Response: Respondent denies the allegations in Paragraph 1 for the reasons stated on page 5 of the Response.

2. On December 1, 2018, Respondent was elected Chair of the Democratic Governors Association (“*DGA*”). On December 12, 2018, Donald Sweitzer became Treasurer of the DGA.

Response: Respondent admits the allegations in Paragraph 2.

3. On December 5, 2018, IGT announced that Donald Sweitzer would retire as Chairman of IGT Global Solutions Corporation on December 31, 2018.

Response: Respondent admits the allegations in Paragraph 3.

4. The purpose of the Democratic Governors Association (“*DGA*”) is to “promote Democratic policies and support the election of Democratic Governors and other non-federal candidates” and Respondent and Donald Sweitzer have both helped fundraise for the DGA across the country.

Response: Respondent admits the allegations in Paragraph 4, except to deny that the DGA supports the election of non-federal candidates other than governors.

5. Respondent and Donald Sweitzer are both officers of the DGA.

Response: Respondent denies the allegations in Paragraph 5 for the reasons stated on page 6 of the Response.

6. Donald Sweitzer is registered as a lobbyist for IGT and its affiliates in the State of Rhode Island.

Response: Respondent lacks sufficient knowledge or information to admit or deny Mr. Sweitzer’s lobbyist status with respect to IGT affiliates.

7. Donald Sweitzer is probably a shareholder of IGT with an ownership interest that would exceed \$5,000.

Response: Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 7.

8. IGT's stock price has declined by about 40 percent over the past year and IGT has failed to meet earnings expectation for three of the last four quarters. IGT is facing difficulties arising from an increase in gaming taxes and a decline of its installed gambling machines in North America. IGT's video-gambling machines may be netting less revenues than its competitors' machines in Rhode Island. IGT has a credit rating of BB+ from S&P and Ba2 from Moody's. IGT's debt is considered below investment grade or junk bond.

Response: Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 8.

9. In 2003, the State of Rhode Island entered into a Master Contract with IGT, which will not expire until 2023. This Master Contract includes (i) Online Gaming Agreement; (ii) Video Lottery Central Computer System Agreement; (iii) Video Lottery Terminal Technology Provider License Agreement; and (iv) Instant Ticket Vending Machine Agreement. Respondent's administration also entered into an Instant Ticket Agreement with IGT in 2016 and a Website Services Agreement with IGT in 2019.

Response: Respondent admits the allegations in Paragraph 9.

10. On or around January 2019, Respondent and her office began "secret negotiations" with IGT to extend the current Master Contract.

Response: Respondent admits that she engaged in discussions with IGT about a potential extension of the Master Contract as stated on pages 3-4 of the Response. Respondent denies that the discussions constituted "secret negotiations."

11. Under the tentative agreement between the State of Rhode Island and IGT, the Master Contract with IGT as well as the Instant Ticket Agreement and the Website Services Agreement will be extended until 2043.

Response: Respondent admits the allegations in Paragraph 11.

12. The new agreement will increase IGT's share of Rhode Island lottery revenues from 1 percent to 5 percent between \$275 million to \$400 million and will change Rhode Island law to give IGT control of 85 percent of the video gaming machines in Rhode Island.

Response: Respondent denies the allegations in Paragraph 12. The tentative agreement submitted to the legislature proposes to increase from 1 percent to 4 percent on revenues between \$275 million to \$400 million. Also, the tentative agreement proposes to allow IGT to currently control up to 85 percent of the video gaming machines in Rhode Island, though it may go down through the 'efficiency process'; further, at the time the agreement was reached, IGT controlled 85 percent of the floor, and it was therefore not a change. In the time since the tentative agreement was reached the efficiency process has lowered IGT's share to approximately 77 percent.

13. The new tentative agreement between IGT and the State of Rhode Island to extend the Master Contract requires legislative authorization.

Response: Respondent admits the allegations in Paragraph 13.

14. The Respondent speaks to Donald Sweitzer on a regular basis and Respondent has “discussed IGT’s presence in Rhode Island” with Donald Sweitzer.

Response: Respondent admits the allegations in Paragraph 14.

15. Donald Sweitzer hosted a meeting with a representative of Twin River which involved negotiations to change the amount of video slot machines IGT would have in Rhode Island under the new agreement.

Response: Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 15.

16. Donald Sweitzer met with and lobbied House Speaker Nicholas Mattiello for legislative approval of the new agreement with IGT.

Response: Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 16.

17. According to Twin River, Rhode Island taxpayers could receive a much larger upfront payment for the services provided by IGT under the new tentative agreement, and Rhode Island is paying more for services provided by IGT than other states.

Response: Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 17.

18. Respondent and Donald Sweitzer have been business associates since December 12, 2018 when they became officers of the DGA.

Response: Respondent denies the allegations in Paragraph 18.

19. Because Respondent and Donald Sweitzer “are fellow officers in an organization, or who are in leadership positions which permit them to affect the financial directives of an organization” they “are business associates.”

Response: Respondent denies the allegations in Paragraph 19.

20. Donald Sweitzer probably has a financial interest worth at least \$5,000 in IGT, a state vendor. In 2015, IGT reported that Sweitzer owned 58,715 shares of International Game Technology PLC. Sweitzer’s ownership of shares was not reported in IGT’s annual SEC reports because he was listed as a “consultant.”

Response: Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 20.

21. Donald Sweitzer has been an advocate for a long-term agreement with IGT.

Response: The allegations in Paragraph 21 are not made with sufficient detail to allow Respondent to admit or deny the allegations.

22. Donald Sweitzer has been present at meetings where the agreement between the State of Rhode Island and IGT was discussed.

Response: The allegations in Paragraph 22 are not made with sufficient detail to allow Respondent to admit or deny the allegations.

23. By discussing IGT's presence in Rhode Island, Donald Sweitzer was influencing Respondent to pursue options that would keep IGT based in Rhode Island, such as a new 20-year agreement with IGT.

Response: Respondent denies the allegations in Paragraph 23.

24. Donald Sweitzer was actively lobbying for IGT in connection with the extension of the master contract with the State of Rhode Island.

Response: The Respondent lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 24.

25. As a lobbyist for IGT, Donald Sweitzer has "discussed IGT's presence in Rhode Island" with Respondent.

Response: Respondent admits to the allegations in Paragraph 25.